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January 18, 2002
EXECUTIVE SECRETARY

BY HAND DELIVERY

David Waddell, Esq.
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

**Re: Show Cause Proceeding Against Talk.com, Inc.
Docket No. 01-00216**

Dear David:

Respondent Talk.com Holding Corp ("Talk.com" or the "Company") by its attorneys, hereby files this letter in reply to the Response of the Consumer Services Division ("CSD") to Talk.com's Brief in Support of Request to Take Depositions of Complaining Witnesses ("*Response to Talk.com's Brief*"), filed with the Executive Secretary on January 16, 2002.

In its *Response to Talk.com's Brief*, the CSD stresses the fact that "informal discovery has been, and continues to be practicable" as method by which Talk.com may obtain the same information it seeks to elicit through the use of depositions. *See Response to Talk.com's Brief* at 1. Though the Company agrees that some degree of informal investigation is necessary and practicable in this case, it disagrees with the CSD's assertion that informal investigation is all that is required. What the CSD rationale neglects to acknowledge is that the use of informal methods of discovery will not provide the Company with the same degree of information as would be available through the use of depositions. First, by refusing to allow the Company to depose the individuals contained in the Show Cause Order,¹ and requiring the Company to conduct informal interviews of the individual complainants, it is possible (and probably quite likely) that some, if not all of the complainants will refuse to accommodate the Company's request, particularly after having lengthy discussions with the CSD staff. *See Consumer Services Division Brief in Opposition to Deposing the Consumers Included in the Show Cause Order* at 7 ("*CSD Brief in Opposition*") (consumer have already "taken the time from their busy schedules to talk to our investigators"). These customers would be free to refuse to speak with Talk.com and/or to refuse

¹ "Show Cause Order" refers to the "Order Requiring Talk.com to Appear and Show Cause Why a Cease and Desist Order and/or Fine Should not be Imposed" issued on November 8, 2001 by the Tennessee Regulatory Authority in Docket No. 01-00216.

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to answer specific questions necessary to investigate the allegations. In light of these facts, Talk.com is not likely to receive adequate information through voluntary interviews.

Second, informal interviews, in lieu of depositions, are not as good a method of obtaining information that can be used in a formal proceeding. Depositions, unlike informal interviews, place the individual being deposed under oath, requiring them to provide truthful responses to the inquiries presented. There is no such requirement in informal interviews. As a direct result of not requiring the interviewee to be under oath, informal interviews do not carry the same weight of reliability in a formal proceeding. Informal interviews leave open the realistic possibility that the individual may, if called upon to take the stand during the formal hearing, contradict the information provided during the informal interview, leaving the Company with no legal recourse. Furthermore, the only "chilling effect" that would occur by permitting depositions would be on the very statements that the complainants would be unwilling to affirm the statements under oath. There would be no effect on the ability of the CSD to enforce Tenn. Code Ann. § 65-4-125 as alleged. *See CSD Brief in Opposition* at 6.

Third, contrary to the claims of the CSD, the issues involved in the Show Cause Order and the allegations raised in the complaints of the individual complainants are complex and thus, best investigated through formal methods of discovery, such as the deposition. Obtaining a clear comprehension as to what the complainant understood at the time surrounding the issue in their complaint is essential to responding to the Show Cause Order. Consumer confusion and misunderstandings are common and can be, and generally are, complex and dependent upon an understanding of the entire context of the situation that occurred. Without the use of formal discovery, the Company will not be able to fully defend the allegations raised.

Fourth, no conflict of interest will be created if Talk.com is allowed to depose the individual complainants. In fact, by permitting Talk.com to take the depositions, the Company will be able to obtain the complainant's point of view and not have to attempt to separate the CSD's perspective on the issues from the complainant's actual statements or concerns. Otherwise, the Company is left trying to defend allegations to which it is uncertain are precisely the problem.

Finally, CSD is asking the Commission to fine Talk America millions of dollars. It is the largest action CSD has ever brought. The severity of the allegations justifies Talk America going through full discovery. This is dissimilar than a small claims action in which a person might choose not to defend. Here, Tennessee law favors full discovery and Talk America intends to avail itself fully of that discovery right and disprove the allegations launched against it. It would be counter to public policy, which favors the right to a full defense, to deny full discovery in such a large case where tremendous fines are sought.

For the foregoing reasons, Talk.com submits that the taking of depositions is the only reasonable method of discovery in this case. Without the opportunity to formally depose the individual complainants, Talk.com will not have the ability to prepare a complete defense and thoroughly

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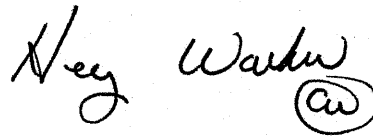
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respond to the allegations raised in the Show Cause Order. Despite the arguments raised by the CSD, Talk.com has presented legitimate reasons in support of its request to conduct depositions of the complainants contained in the Show Cause Order.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:



Henry Walker

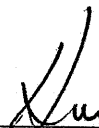

cc: Lynn Questell, Esq.
Steven A. Augustino, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been delivered via fax or hand delivery and U.S. mail to the following on this the 18th day of January 2002.

 
Henry Walker 